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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,041	10/22/2003	Lynette M. Thorlakson	LYTH-1-1001	6436

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SEATTLE, WA 98104

EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 04/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/692,041

Applicant(s)

THORLAKSON, LYNETTE M.

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by applicants' admission of the prior art.

It is noted that claims 1, 11 and 12 do not positively recite the treats in the container. Therefore, since applicant acknowledges that the coffee cup is, of course, conventional, the conventional coffee cup of the prior art would be capable of containing the treats. Note, too, even a coffee cup having coffee therein would still be capable of containing treats. Also, the phrase "coffee cup" just means a cup capable of holding coffee which would be any cup that does not instantly dissolve when contacted with coffee.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, 11-14, 16, 21-23 and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keane (5/2002, <http://www.looksmart.com/>) in view of Nash (11/01/2002, <http://www.baselinemag.com>), Seattle Times (08/31/2002, page E4), New York Times (12/15/2002, page 80) and applicant's admission of the prior art, further in view of Robinson

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4,934,525), Bezek et al (6,596,328), Times Union (11/29/1989, page C1), Tilman (6,467,956), Shadrach (US 2004/0099719), and Yuguchi (6,844,015).

In regard to claim 1, Keane, as further evidenced by Nash, New York Times and Seattle Times, disclose it was conventional in the art to provide a package capable of holding treats comprising a cup defining an inside volume to receive the treats and including a rim surrounding an upper end of the inside volume and a lid removably fastened to the rim of the cup (i.e., “reclosable”) with, the lid capable of at least partially covering the treats. Note that applicant’s admission of the prior art discloses the cup structure is conventional. It is noted that claim 1, does not positively recite that the treats are in the cup. Claim 1 only recites that the cup is capable of receiving the treats. As to what type of treats would be placed in the cup, once it was known to put treats in a cup, whether the treats were for humans or dogs is seen to have been an obvious matter of choice. Food is food, whether the food is intended to be given to humans or animals. Also, claim 1, refers to the cup as a “coffee cup”. What exactly structurally constitutes a coffee cup is not clear. A coffee mug can be referred to as a coffee cup or even any cup that is capable of holding coffee. Thus, the only defining element to the phrase coffee cup is a cup capable of holding coffee. Robinson can be relied on as further evidence that it was conventional in the art to provide a coffee cup that has a lid that is removably fastened to the rim of the cup (e.g. a “snap-on-cover”, column 2, line 60 plus) and that contains treats (e.g. coffee flavored candies-34). Bezek et al can be relied on as further evidence that it was known to package treats in cup shaped containers with a lid removably fastened to the rim (column 7, paragraph 2). Times-Union (11/29/1989), page C1) is relied on as further evidence that it was conventional to package pet foods in cups that are normally intended to contain foods for

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humans ("the frozen treat for dogs, which comes in single-serving plastic ice cream cups").

Tilman et al and Shadrach are relied on as further evidence that it was known to employ the same packaging for either human food or pet food. Finally, Yuguchi can be relied on as further evidence of applicant's admission of the conventionality of lids removably fastened to the rim of cups. In regard to claim 2, the art taken as a whole teaches it would have been obvious to modify the basic cup and lid and add a removable seal attached to the rim as evidenced by Bezek et al and Yuguchi. In regard to claim 3, heat activated adhesives are notoriously conventional in the art. Note that Bezeki et al teaches the sealing of the lid using heat and Yuguchi uses adhesive. In regard to claim 5, Bezek et al teaches the conventionality of employing a pull tab (i.e. 222) on a cover seal. Similarly for Yuguchi (Figure 7). In regard to claim 11, snap lids are notoriously conventional in the art as discussed above and including applicants own admission of the prior art. Claim 21, the method of filling the coffee cup with animal treats, is rejected for the same reasons given above. That is, once it was known to package food in conventional cups, the particular conventional food (whether for humans or animals) one chooses to package and the particular conventional cup structure one chooses to employ is seen to have been an obvious matter of choice. A receptacle to hold contents is a receptacle to hold contents, and the contents are contents, whether food or not, whether for humans or not.

Claims 4, 15 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Shelby (4,184,310).

Claims 4, 15 and 24 differ from the combination only in the recitation that the removable seal is heat shrinkable. As evidenced by Shelby, it is well established to employ heat shrinkable

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removable seals on containers including cups and to modify the combination and employ a shrinkable seal for its art recognized and applicant's intended function would have been obvious.

Claims 6-10, 17-20, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Vangertruyden (US 2002/0025363), Nugent (4,377,598) and Barnes et al (5,674,546).

Vangertruyden, Nugent and Barnes et al all teach containers/cups wherein the food contained therein are further packaged in bags for additional sealing. To modify the combination and provide the food within a bag for its art recognized and applicant's intended function would therefore have been obvious. The particular conventional bag one chooses to employ is seen to have been an obvious result effective variable (claims 7-9).

In summary, applicant has combined a series of conventional expedients, employed them for their well known and intended function and achieved no new or unexpected result therefrom.

The remainder of the references cited in the USPTO 892 forms are cited as art of interest.

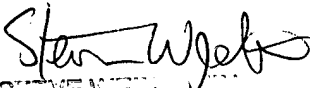
Any inquiry concerning this communication from the examiner should be directed to Steven L. Weinstein whose telephone number is (571) 272-1410. The examiner can generally be reached on Monday-Friday from 6:30 a.m. to 3:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S.L. Weinstein/dh  
April 6, 2005

  
STEVEN WEINSTEIN  
PRIMARY EXAMINER 1761